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SUBJECT: DIPLOMATIC IMMUNITY - VIENNA CONVENTION AND
DOMESTIC LAW

REF: SAN JOSE 2731

1. REFTEL REQUESTED CONFIRMATION THAT USG CONTINUES ACCORD
FULL IMMUNITY FROM CIVIL AND CRIMINAL JURISDICTION TO
ADMIN AND TECHNICAL STAFF OF FOREIGN DIPLOMATIC MISSIONS
IN SPITE OF ENTRY INTO FORCE OF VIENNA CONVENTION ON
DIPLOMATIC RELATIONS. UNDER 22 USC 252-254, IT IS A
CRIMINAL OFFENSE TO ISSUE ANY WRIT OR PROCESS DIRECTED
TOWARDS OFFICERS AND EMPLOYEES OF FOREIGN DIPLOMATIC
MISSIONS, AND THE FAMILIES AND SERVANTS OF CERTAIN OF
THESE PERSONS. THAT STATUTE IS STILL IN FORCE AND, AS A
CONSEQUENCE, CONTINUES TO CLOAK BOTH DIPLOMATIC OFFICERS
AS WELL AS DIPLOMATIC STAFF PERSONNEL (INCLUDING ADMIN-
ISTRATIVE AND TECHNICAL STAFF) WITH IMMUNITY FROM BOTH
CRIMINAL AND CIVIL JURISDICTION. THE JUSTICE DEPARTMENT,
IN RESPONSE TO A REQUEST FROM THE STATE DEPARTMENT, HAS
ISSUED AN OPINION THAT THE ENTRY INTO FORCE OF THE
VIENNA CONVENTION DOES NOT CREATE A CONFLICT WITH THIS
FEDERAL STATUTE AND THAT, THEREFORE, BOTH MAY BE ENFORCED

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SIMULTANEOUSLY.

2. NOTWITHSTANDING THE ABOVE, THE DEPARTMENT HAS RECOMMENDED THAT THE ABOVE-CITED DOMESTIC STATUTE BE REPEALED. IT IS LIKELY THAT A PROPOSAL TO THAT EFFECT WILL BE INTRODUCED SOME TIME IN THE NEAR FUTURE. REPEAL OF THIS STATUTE WILL BRING US PRACTICE INTO CONFORMITY WITH THE INTERNATIONAL LAW AND PRACTICE AS EMBODIED IN THE VIENNA CONVENTION, WIDELY REGARDED AS DECLARATORY OF CUSTOMARY INTERNATIONAL LAW. WHEN THIS STEP IS TAKEN, MEMBERS OF THE NON-DIPLOMATIC STAFF OF A DIPLOMATIC MISSION WILL CONTINUE TO ENJOY IMMUNITY FROM CRIMINAL PROSECUTION, BUT WILL BE RESTRICTED IN THEIR ENJOYMENT OF CIVIL IMMUNITY AS SPECIFIED IN ARTICLES 31 AND 37 OF THE CONVENTION.

3. WHILE DEPARTMENT SEES NO HARM IN EMBASSY'S POINTING OUT THAT ADMIN AND TECHICAL EMPLOYEES OF GOCR MISSION IN WASHINGTON RECEIVE FULL IMMUNITY, IN LIGHT OF DEPARTMENT'S PRESENT POSTURE ON USEFULNESS OF ANCIENT (1790) STATUTE INVOLVED, DEPARTMENT DEEMS IT INADVISABLE TO PURSUE STRONG ARGUMENT BASED ON RECIPROCITY. ROGERS

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